

1
2 UNITED STATES DISTRICT COURT
3

4
5 Mauricio Jasso, et al., Case No. 2:20-cv-00858-CDS-BNW
6 Plaintiffs
7 v.
8 Wells Fargo Bank, N.A., et al.,
9 Defendants
10

Order Affirming Magistrate Judge's
Decision and Overruling Defendants'
Appeal

[ECF Nos. 309, 316]

11 Mauricio Jasso, JAMA Investment Group, and a host of other plaintiffs sue Wells Fargo
12 Bank and two of its employees in this fraud cause, alleging that non-party Daniel Maza-Noriega
13 (Maza) conducted a Ponzi scheme with the bank's assistance and participation. The plaintiffs
14 assert that they invested significant money in Maza's business, First Prime Mortgage, and that
15 he funneled those funds from a Wells Fargo account into other accounts without the plaintiffs'
16 consent. Discovery is nearly closed, but the plaintiffs seek to depose one more witness, a Wells
17 Fargo employee named Alexander Nelson, whom they characterize as "the key percipient
18 witness to the specific conduct at issue in the litigation." ECF No. 319 at 3. I recently held a
19 status hearing on several pending motions and resolved most of them orally on the record after
20 hearing the parties' arguments. ECF No. 323. At the conclusion of that hearing, I announced that
21 I would issue a written order resolving the defendants' appeal of the magistrate judge's decision
22 to allow Nelson's deposition to proceed. Having considered the parties' written papers and oral
23 argument, I affirm the magistrate judge's decision and overrule the defendants' appeal of it
24 because I find that the magistrate judge's order was not clearly erroneous or contrary to law.
25
26

1 I. Background

2 a. *Procedural history*

3 In October 2022, the defendants moved for a protective order, seeking to prevent the
 4 plaintiffs from deposing Nelson. ECF No. 291. The plaintiffs opposed the motion, and the
 5 defendants replied. ECF Nos. 300, 305. Magistrate Judge Brenda Weksler denied the defendants'
 6 motion on November 16, 2022. ECF No. 309. The defendants timely object to her denial, arguing
 7 that Judge Weksler erred and that the plaintiffs did not meet the applicable excusable-neglect
 8 and good-cause standards in seeking to depose Nelson after the requisite discovery deadlines
 9 had passed. ECF No. 316. The plaintiffs oppose the objection. ECF No. 319. The defendants
 10 sought leave to file a reply in support of their objection, which I recently granted; they then filed
 11 their reply. ECF Nos. 320–22.

12 b. *Relevant facts*

13 The defendants aver that the only reason Nelson was ever on the witness list is that they
 14 needed to question him about a “fabricated letter supposedly authored by Mr. Nelson.” ECF No.
 15 291 at 3. But that need “was mooted when fact witness Lucy Herrera—whom [p]laintiffs
 16 represent in this case—admitted at her deposition that the letter that was purportedly authored
 17 by Mr. Nelson was indeed forged . . . meaning Wells Fargo no longer had a need to call Mr.
 18 Nelson to establish that fact at trial.” *Id.* So in February 2022, “[p]laintiffs’ counsel agreed not to
 19 notice Mr. Nelson’s deposition if Wells Fargo de-designated Mr. Nelson as a trial witness,
 20 which Wells Fargo did.” ECF No. 291 at 4. The defendants believed “[t]hat ended the matter.” *Id.*

21 According to the plaintiffs, they later learned that Nelson’s signature appeared on wire
 22 transfer documents, showing that he authorized fund transfers. The plaintiffs note that they did
 23 not pay much attention to Nelson’s name earlier in discovery because the defendants had
 24 explained that he was out on medical leave, and they were not sure when he would return to
 25 work or be available for questioning. But once some time had passed and their understanding of
 26 the case developed, the plaintiffs realized that “Nelson’s key role as Maza’s business banker for

1 activity that Wells Fargo investigated for money laundering is therefore crucial for [p]laintiffs' 2 case," and "they are entitled to cross examine him on his knowledge of [various] businesses and 3 the (il)legitimacy of the multi-million-dollar wire transfers he approved and facilitated." ECF 4 No. 300 at 4. The plaintiffs assert that "when [they] learned about Mr. Nelson's central role in 5 the case, the deadline to complete all depositions was set to expire on October 7, 2022." ECF No. 6 300 at 4 (citing ECF No. 270 at 5). "Thus, Plaintiffs' counsel first renewed their request to 7 depose Mr. Nelson on September 7, 2022." *Id.* (citing ECF No. 300-3 at 4). The plaintiffs 8 continue that "Wells Fargo did not respond, and so [p]laintiffs' counsel repeated their request to 9 depose Mr. Nelson on September 19, 2022." *Id.* (citing ECF No. 300-3 at 3). "Notably, in between 10 these two renewed requests to depose Mr. Nelson, the parties also filed a joint motion for 11 extension of time to extend the [c]ourt's [s]cheduling [o]rder deadlines, and noted that" the 12 plaintiffs would take the depositions of two named Wells Fargo employees, Carolyn Carlson 13 and Elizabeth Stanley. *Id.* (citing ECF No. 282 at 3).

14 On September 30, 2022, plaintiffs revived their request to depose Nelson. ECF No. 291-1. 15 They indicated that the deposition would take place on October 20, 2022. *Id.* at 3. But the 16 defendants contend that they have de-designated Nelson as a trial witness, and that the 17 plaintiffs have neither identified him in their own disclosures as a trial witness nor explained 18 their untimely need to depose him. ECF No. 291 at 4. In sum, the defendants argue that Nelson 19 should not be deposed because his "deposition was noticed out of time, is beyond the 20 presumptive limits of Fed. R. Civ. P. 30(b)(2), and there is not good cause [for] the taking of this 21 deposition out of time and despite Rule 30's protections." *Id.*

22 The plaintiffs counter that their request to depose Nelson is timely and was properly 23 noticed. ECF No. 300. They argue that the defendants "would not be prejudiced by one 24 additional deposition of a witness." *Id.* at 2. And they note that they "elected not to depose either 25 Ms. Carlson or Ms. Stanley, but rather sought to depose Mr. Nelson instead to prevent any 26 Wells Fargo objection based on exceeding the number of fact-witness depositions." *Id.* at 4-5.

1 **II. Legal standard**

2 Magistrate judges have limited authority to rule on non-dispositive motions, and parties
 3 may appeal such orders by filing and serving written objections. LR IB 3-1(a); 28 U.S.C. § 636.
 4 The opposing party may respond, but the objecting party is only permitted to reply with the
 5 court's leave. LR IB 3-1(a). The objecting party must show that "the magistrate judge's order is
 6 clearly erroneous or contrary to law." *Id.* And "[t]he district judge may affirm, reverse, or modify,
 7 in whole or in part, the magistrate judge's order," or "may also remand the matter to the
 8 magistrate judge with instructions." *Id.* at (b). A magistrate judge's order "is contrary to law
 9 when it fails to apply or misapplies relevant statutes, case law[,] or rules of procedure." *Glob.*
 10 *Advanced Metals USA, Inc. v. Kemet Blue Powder Corp.*, 2012 WL 3884939, at *3 (D. Nev. Sept. 6, 2012).

11 **III. Discussion**

12 Judge Weksler denied the defendants' motion for a protective order and ordered that
 13 Nelson's deposition must be scheduled no later than November 30, 2022, and conducted no later
 14 than December 30, 2022. ECF No. 309 at 6. She gave the following as her reasons for denying the
 15 motion: (1) plaintiffs' notice to depose Mr. Nelson was timely, and (2) plaintiffs have shown
 16 good cause and excusable neglect to extend deadlines in order to depose Mr. Nelson. ECF No.
 17 309 at 3. She reasoned that the plaintiffs had good cause to seek Nelson's deposition because he
 18 "is a Wells Fargo employee who authorized several of the allegedly suspicious wire transfers
 19 that inform [p]laintiffs' complaint." *Id.* She further discusses that "[p]laintiffs have only deposed
 20 12 Wells Fargo employees" and that the testimony from Nelson cannot "be obtained from some
 21 other source that is more convenient, less burdensome, or less expensive, as only Mr. Nelson can
 22 speak to his interactions and communications with Mr. Maza as well as the wire transfers that
 23 he authorized and the reasons for doing so." *Id.*

24
 25
 26

1 Another reason that Judge Weksler found constituted good cause was that “Wells Fargo
 2 played a role in delaying [p]laintiffs’ noticing Mr. Nelson’s deposition by representing that Mr.
 3 Nelson was too ill to be deposed and by not responding to [p]laintiffs’ renewed request in early
 4 September 2022 to depose Mr. Nelson for several weeks.” *Id.* (citing ECF No. 300-3; Fed. R. Civ.
 5 P. 26(2)(C)(ii)). She found that the plaintiffs were diligent in seeking to depose Nelson. Further,
 6 Judge Weksler explained that “Wells Fargo has been on notice since at least August 2021 that
 7 [p]laintiffs were interested in deposing Mr. Nelson,” and she concluded that the defendants
 8 would not be prejudiced by the deposition. *Id.* at 4. Lastly, she explained that the parties agreed
 9 in September 2022 to the depositions of two specific Wells Fargo employees, and the plaintiffs
 10 have since clarified that they seek to depose Nelson “*in lieu* of the two named employees.” *Id.* “Any
 11 (undue) burden that Wells Fargo may experience by this substitution is outweighed by the fact
 12 that [p]laintiffs will be deposing one—rather than two—of its employees.” *Id.*

13 As far as Wells Fargo’s argument that the plaintiffs have exceeded the ten-deposition
 14 limit, Judge Weksler found that position “unpersuasive.” *Id.* She explained that because Wells
 15 Fargo already agreed to two additional depositions beyond the limit of ten, doing one deposition
 16 of Nelson in lieu of the other two “would not run afoul of the 10-deposition limit.” *Id.* at 5. She
 17 went beyond that to conclude that even if the parties did not agree to the deposition,
 18 “[p]laintiffs have made a particularized showing for taking an additional deposition of Mr.
 19 Nelson and . . . the burden does not outweigh any likely benefit.” *Id.*

20 Judge Weksler’s order does not constitute clear error and is not contrary to law.¹ She
 21 reasoned that the plaintiffs’ notice to depose Nelson was timely and that they showed good
 22 cause and excusable neglect in requesting to extend the discovery deadlines to depose him. I
 23 concur. Based on the record before me, the defendants delayed in responding to the plaintiffs’
 24

25 ¹ Nor did she evaluate the defendants’ motion under the incorrect standard, as she found that the
 26 plaintiffs met their burden to demonstrate both good cause and excusable neglect and concluded that the
 defendants failed to demonstrate that they would be prejudiced under Federal Rule of Civil Procedure
 26. So to the extent that the defendants appeal the standard that Judge Weksler applied in her order, I
 overrule it and find that she did not err in her analysis of the parties’ burdens.

1 renewed request to depose Nelson. The plaintiffs asked the defendants on September 7 and 19
2 about deposing Nelson, but the defendants did not respond until September 28. ECF No. 300 at
3 4–5. When the plaintiffs initially requested to depose Nelson, the operative deadline for them to
4 complete depositions was October 7, 2022. ECF No. 270 at 5. So when the plaintiffs renewed
5 their request to depose Nelson, after learning about his involvement in the approval of wire
6 transfers, they still had one month before the deadline to complete depositions. Through no fault
7 of the plaintiffs, the defendants failed to respond to the initial request (and a reminder) for
8 several weeks. While it may not have been possible to complete the deposition within that
9 timeframe due to the defendants’ delayed response, I agree with Judge Weksler’s assessment
10 that the plaintiffs’ request itself was timely.

11 As Judge Weksler points out in her order, the parties agreed to two additional
12 depositions of fact witnesses, Carlson and Stanley, around the same time that the ongoing
13 dispute about Nelson occurred. The parties have since agreed not to depose either of those
14 witnesses, and the plaintiffs seek to depose Nelson in their place. I therefore find that the
15 plaintiffs have demonstrated good cause and excusable neglect in seeking Nelson’s deposition,
16 and the defendants would not be unduly prejudiced by it because they already agreed to two
17 additional depositions, which are no longer slated to occur. Discovery deadlines have been
18 extended in this case a multitude of times, and it is time for the litigation to move forward
19 beyond the discovery phase. I therefore order that the defendants’ appeal of Judge Weksler’s
20 order is overruled, and I affirm her order in full. The plaintiffs may depose Nelson and must
21 coordinate with the defendants and through the appropriate channels with Judge Weksler’s
22 chambers to schedule the deposition as soon as possible and extend discovery deadlines—
23 hopefully one final time—to accommodate its scheduling.

IV. Conclusion

IT IS THEREFORE ORDERED that the magistrate judge's order denying the defendant's motion for a protective order [ECF No. 309] is AFFIRMED, and the defendants' appeal of that decision [ECF No. 316] is OVERRULED. The plaintiffs may depose Alexander Nelson, and if they require additional time to do so beyond the current December 31, 2022, deadline, then they must request it from the magistrate judge. *1*

DATED: December 21, 2022

Cristina D. Silva
United States District Judge